



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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Legend:

Corporation =

Dear

This is in response to your ruling request dated July 20, 2009 requesting an extension for an additional five years under section 4943(c)(7) of the Internal Revenue Code ("Code") for disposing of certain excess business holdings.

FACTS

You are a private foundation organized as a trust on December 30, 2004. You have been recognized as an organization exempt under section 501(c)(3) of the Code and are classified as a private foundation within the meaning of section 509(a). Your trust document states that your beneficiaries are charitable, scientific and educational entities. You were initially funded with 1,000 shares of Corporation stock. The 1,000 shares represent a 100 percent interest in Corporation. Prior to the donation of Corporation shares, your donor owned 100 percent of the stock of Corporation. As a result of the contribution, your ownership interest constitutes excess business holdings under section 4943(c)(1). Your initial five-year period for disposing of excess business holdings ends on December 30, 2009.

You have been trying to dispose of your Corporation holdings since 2005. During the initial five-year period for disposing of excess business holdings under section 4943(c)(6) of the Code, you engaged the services of a prominent real estate agent to help sell your Corporation holdings. The agent received offers for the purchase of the holdings; however, subsequent negotiations never culminated in a written offer. Continued contact with several local realtors has confirmed that there are no willing buyers for the property at this time. Also, the Foundation has contacted and/or negotiated with several individuals regarding the disposition of the Corporation shares with no success. The Foundation's trustees attribute this to the current state of the economy, as well as to the unique nature of the property.

Your represent that your real estate agent states that given the current economic climate, the Corporation holdings could only be sold if the price were substantially below market value, and

your agent believes that a turnaround in this area will occur over the next two to three years. Despite current economic conditions, ongoing development appears to be moving forward, which you anticipate will boost the local economy over the next five years. Corporation has significant value and the sale of an asset of this size will have significant consequences to you. Because of the size, value, nature and complexity of this business holding, you have, despite your representations that you have used best efforts, been unable to complete the sale of the Corporation holdings within the prescribed five-year period.

Your trustees have established a plan of sale that includes: developing a comprehensive brochure, developing local and direct contacts with investment management companies and private equities firms, maintaining contact with top-selling realtors, contacting mobile home park acquisition companies, increasing advertising in various mediums targeted to commercial real estate investors, and listing the property on websites connected with this industry. Your trustees expect that they can sell the property at a price not substantially below fair market value no later than December 30, 2014. You submitted the plan to your state Attorney General and are waiting for a response. If and when a response is received from the state Attorney General, a copy will be submitted to the Secretary in accordance with section 4943(c)(7)(B)(ii) of the Code.

Prior to the end of the initial five-year period for disposing of excess business holdings under section 4943(c)(6) of the Code, you submitted a request to the Internal Revenue Service for an extension of five years to complete the required disposition.

#### RULING REQUESTED

You requested a ruling extending the five-year period of time for disposing of excess business holdings for an additional five years under section 4943(c)(7) of the Code.

#### LAW

Section 4943(a)(1) of the Code imposes excise taxes on the excess business holdings of any private foundation in a business enterprise.

Section 4943(c)(1) of the Code provides that the term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Section 4943(c)(2) of the Code provides in part that the permitted holdings of any private foundation in an incorporated business enterprise are 20 percent of the voting stock, reduced by the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(6)(A) of the Code provides that, if there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change)

shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings.

Section 4943(c)(7) of the Code provides that the Internal Revenue Service may extend for an additional five years the initial five-year period for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if:

- (A) The foundation establishes that: (i) it made diligent efforts to dispose of such holdings during the initial five-year period, and (ii) disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings;
- (B) Before the close of the initial five-year period: (i) the private foundation submits to the Internal Revenue Service a plan for disposing of all of the excess business holdings involved in the extension, and (ii) the private foundation submits the plan to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Internal Revenue Service any response the private foundation received during the five-year period; and
- (C) The Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

## ANALYSIS

You are subject to section 4943 of the Code, which imposes a tax on the excess business holdings of private foundations. Generally, under section 4943(c)(2)(A), a private foundation is permitted to hold twenty percent of the voting stock in a business enterprise with any excess constituting excess business holdings. However, if a private foundation acquires holdings in a business enterprise other than by purchase (e.g., by gift) which causes the foundation to have excess business holdings, then the interest of the Foundation in such business enterprise shall be treated as held by a disqualified person (rather than the Foundation) for a five-period beginning on the date such holdings were acquired by the Foundation, under section 4943(c)(6)(A).

Under section 4943(c)(7) of the Code, the Internal Revenue Service may extend the initial five-year period for disposing of excess business holdings for an additional five years if you establish that: (i) you made diligent efforts to dispose of such holdings during the initial five-year period, and disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings, (ii) before the close of the initial five-year period you submit to the Internal Revenue Service and Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved a plan for disposing of all of the excess business holdings involved during the extension and (iii) the Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

You received a donation of 100% of the shares of Corporation from your donor, a disqualified person under section 4946 of the Code. You have stated that because you own more than 20 percent of Corporation's holdings, the holdings of Corporation that you own constitute excess business holdings under section 4943(c)(1). Therefore, you are required under section 4943(c)(6) to dispose of these holdings during the initial five-year period ending on December 30 2009. During the initial five-year period, as required by section 4943(c)(7)(A)(i) of the Code, you made diligent efforts to dispose of the Corporation holdings. You hired a prominent and experienced local real estate broker who listed and actively marketed the property, and continues to do so. However, due to the unique nature of the holdings owned by the Corporation, and the current economic climate, you are unable to dispose of the Corporation holdings. You represented that disposition of the Corporation holdings within the initial five-year period is not possible, except at a price substantially below fair market value, as required by section 4943(c)(7)(A)(ii). Before the end of the initial five-year period, you submitted a request to the Internal Revenue Service under section 4943(c)(7) for an additional five-year period within which to dispose of your Corporation holdings and you described your plan for disposing of Corporation holdings. You also submitted the plan to the Attorney General of your state, who is expected to approve the plan. Thus, based on the information submitted, we have determined that your plan to dispose of all of your Corporation holdings within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you meet the requirements under section 4943(c)(7) of the Code for an extension of five years to dispose of your Corporation holdings.

#### RULING

Under section 4943(c)(7) of the Code, the period during which you may dispose of your Corporation holdings is extended an additional five years, until December 30, 2014.

We are not ruling on whether your interest in the Corporation constitutes excess business holdings.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald Shoemaker  
Manager, Exempt Organizations  
Technical Group 2

Enclosure  
Notice 437